



# RULE-MAKING ORDER

**CR-103 (June 2004)**  
(Implements RCW 34.05.360)

**Agency:** Secretary of State, Elections Division

☐ Permanent Rule  
☒ Emergency Rule

**Effective date of rule:**

**Permanent Rules**

☐ 31 days after filing.  
☐ Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

☒ Immediately upon filing.  
☐ Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

☐ Yes ☒ No If Yes, explain: \_\_\_\_\_

**Purpose:** To implement the felon screening process required by RCW 29A.08.520 and in accordance with the King County Superior Court ruling on felon voters in *Madison v. State of Washington*.

**Citation of existing rules affected by this order:**

Repealed: \_\_\_\_\_

Amended: WAC 434-324-106

Suspended: \_\_\_\_\_

**Statutory authority for adoption:** RCW 29A.04.611

**Other authority :** \_\_\_\_\_

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date).

Describe any changes other than editing from proposed to adopted version: \_\_\_\_\_

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
e-mail \_\_\_\_\_

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: RCW 29A.08.520 requires the Office of the Secretary of State (OSOS) to screen the statewide list of registered voters for felons. This rule establishes the process for notifying the felons in addition to the process County Auditors must use if a felon disputes the pending cancellation of voter registration.

**Date adopted:** 10/30/06

**NAME (TYPE OR PRINT)**

Steve Excell

**SIGNATURE**

**TITLE**

Assistant Secretary of State

**CODE REVISER USE ONLY**

|   |           |
|---|-----------|
| CODE REVISER'S OFFICE<br>STATE OF WASHINGTON<br>FILED |           |
| OCT 30 2006   |           |
| TIME  | 1:15      |
| WSR   | 06-22-065 |
|   | AM<br>PM  |

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

|                                  |     |       |         |          |          |       |
|----------------------------------|-----|-------|---------|----------|----------|-------|
| Federal statute:                 | New | _____ | Amended | _____    | Repealed | _____ |
| Federal rules or standards:      | New | _____ | Amended | _____    | Repealed | _____ |
| Recently enacted state statutes: | New | _____ | Amended | <u>1</u> | Repealed | _____ |

The number of sections adopted at the request of a nongovernmental entity:

|     |       |         |       |          |       |
|-----|-------|---------|-------|----------|-------|
| New | _____ | Amended | _____ | Repealed | _____ |
|-----|-------|---------|-------|----------|-------|

The number of sections adopted in the agency's own initiative:

|     |       |         |          |          |       |
|-----|-------|---------|----------|----------|-------|
| New | _____ | Amended | <u>1</u> | Repealed | _____ |
|-----|-------|---------|----------|----------|-------|

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

|     |       |         |          |          |       |
|-----|-------|---------|----------|----------|-------|
| New | _____ | Amended | <u>1</u> | Repealed | _____ |
|-----|-------|---------|----------|----------|-------|

The number of sections adopted using:

|                                |     |       |         |          |          |       |
|--------------------------------|-----|-------|---------|----------|----------|-------|
| Negotiated rule making:        | New | _____ | Amended | _____    | Repealed | _____ |
| Pilot rule making:             | New | _____ | Amended | _____    | Repealed | _____ |
| Other alternative rule making: | New | _____ | Amended | <u>1</u> | Repealed | _____ |

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-324-106 Felony conviction--Secretary's quarterly comparisons ~~((and pending cancellation notifications))~~. (1) Once a quarter, the secretary must perform comparisons with the ~~((Washington state patrol, the office of the administrator for the courts, and other appropriate state agencies))~~ department of corrections, as authorized in RCW 29A.08.520, to search for registration records of felons ~~((The quarterly comparison must be performed prior to the first extraction or pull of absentee ballots for a primary, special, or general election))~~ who are under the legal custody of the department of corrections due to an adult felony conviction. The secretary must create a list of ~~((matches by confirming that))~~ felon voters by matching the first name, last name, ((and)) date of birth ((match)), and other identifying information.

(2) ~~((The list of matches must be compared to information provided by the office of the administrator for the courts and the clemency board to identify felons who have received certificates of discharge or gubernatorial pardons for all felony convictions.~~

~~((3) The secretary must not cancel the voter registration record of a voter who has received a certificate of discharge or gubernatorial pardon for all felony convictions. The secretary must flag the voter registration record to prevent future cancellation based on these previous felony convictions.~~

~~((4) If there is no record of a certificate of discharge or gubernatorial pardon for each felony conviction))~~ For each felon voter, the secretary must change the voter's registration status to "pending cancellation." This change of status must be entered prior to the first extraction or pull of absentee or mail ballots. The official statewide voter registration data base must automatically notify the county election management system of the change. Voters with pending cancellation status must not be included in ~~((the))~~ a poll book ~~((and must not receive))~~ or be mailed an absentee or mail ballot.

~~((+5))~~ (3) The secretary must mail a notification letter to each felon whose status is pending cancellation. ~~((In addition to sending a copy of the notification letter to the auditor, the secretary must also send notification of the voter's pending cancellation status to the auditor through the election management system.))~~ The notification letter must be sent to the felon's last known registration mailing address indicating that his or her voter registration is about to be canceled. The ~~((form))~~ letter must contain language notifying the felon that ~~((if the pending cancellation status is in error, the felon))~~ he or she may contact the auditor's office to ~~((reconcile the error and))~~ correct the

information or request a hearing if the felon status is not correct or the right to vote has been restored. The letter must also inform the felon that he or she may request a provisional ballot for any pending elections. ((As outlined in RCW 29A.08.520, the form must also provide information on how the right to vote may be restored, as well as how to register to vote after the right to vote has been restored.)) The notification letter must contain substantially the following language:

Dear .....

According to the Washington state Constitution, a person who has been convicted of a felony is disqualified from voting until the right has been restored. State law requires that the right be restored only after all conditions of all felony sentences have been fulfilled ~~((as outlined in the last paragraph of this letter))~~ or by a certificate of restoration issued by the governor.

Based on name ~~((and))~~, date of birth, and other identifying information maintained in state voter registration records and ~~((felony conviction))~~ department of corrections records, you have been found ineligible to vote due to a felony conviction. The felony conviction record information includes:

Felon's name  
Felon's date of birth  
County of conviction  
~~((Date of conviction))~~  
Case/cause number

Your voter registration is pending cancellation. If you would like to dispute this finding, you have ~~((thirty))~~ 30 days from the postmark date on the envelope to provide documentation that this is incorrect or request a hearing ~~((by contacting))~~.  
You must contact:

County auditor  
County auditor's address  
County auditor's phone number  
~~((County auditor's e-mail address))~~

You may also request a provisional ballot for any election scheduled to occur prior to the resolution of your registration status.

If you do not contact the county elections department within 30 days to dispute ~~((this))~~ the finding ~~((within thirty days))~~, your voter registration will be canceled.

Voting before the ~~((rights are))~~ right is restored is a class C felony ~~((RCW 29A.84.660))~~. The right to vote may be restored by proof of one of the following for each felony conviction:

1. A certificate of discharge, issued by the sentencing court ~~((RCW 9.94A.637))~~;
2. A court order restoring civil right, issued by the sentencing court ~~((RCW 9.92.066))~~;
3. A final ~~((order of))~~ discharge and restoration of civil rights, issued by the indeterminate sentence review board

((RCW 9.96.050)); or

4. A certificate of restoration, issued by the ((governor  
(RCW 9.96.020))) clemency and pardons board; or

5. A pardon, issued by the governor.

Further information about how to get the right to vote restored  
m a y b e f o u n d a t  
((www.secstate.wa.gov/elections/restoring.aspx))  
www.secstate.wa.gov/elections/faq.aspx.

Sincerely,

((-----)) Elections Division  
Office of the Secretary of State

The secretary must provide an explanation of the requirements for restoring the right to vote. The secretary must send to each auditor the voter registration and conviction information for each matched felon registered in that county.

(4) If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled. If an election in which the felon would otherwise be eligible to vote is scheduled to occur during the thirty days, the felon must be allowed to vote a provisional ballot.

(5) The felon's eligibility status may be resolved and the pending cancellation status reversed without scheduling a hearing if the felon provides satisfactory documentation that the felon's civil rights have been restored, the conviction is not a felony, the person convicted is not the registered voter, or the felon is otherwise eligible to vote. The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation based on the same felony conviction.

(6) If the felon requests a hearing, the auditor must schedule a public hearing to provide the felon an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the felon would otherwise be eligible to vote is scheduled. The notice must be mailed to the felon's last known registration mailing address and must be postmarked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.

(7) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documentation, such as a copy of the judgment and sentence, sufficient to prove the felony conviction by clear and convincing evidence. It is not necessary that the copy of the document be certified.

(8) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility in time to hold a hearing prior to certification of an election in which the felon would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending cancellation status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be



counted if otherwise valid. The prosecuting attorney must continue to research the felon's voting eligibility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility prior to the next election in which the felon would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation based on the same felony conviction.

(9) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the felon would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the felon is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The felon must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if continuance is likely to result in additional information regarding the felon's voting eligibility. If the felon is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending cancellation status must be reversed and the secretary must flag the voter registration record to prevent future cancellation based on the same felony convictions. The felon must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.

(10) If the felon's voter registration is canceled after the felon fails to contact the auditor within the thirty day period, the felon may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (6) through (9) of this section.